
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4806.1/02

ATTY/TYPIST: KT:seg

BRIEF DESCRIPTION:

2 **E2SHB 2671** - S AMD
3 By Senator

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. (1) The legislature finds that the health
8 and safety of its citizens, natural resources, and the environment are
9 vital interests of the state that must be protected to preserve the
10 state's quality of life. The legislature also finds that the state's
11 economic well-being is a vital interest that depends upon the
12 development of fair, coordinated environmental permitting processes
13 that ensure that the state not only protects natural resources but also
14 encourages appropriate activities that stimulate growth and
15 development. The legislature further finds that Washington's
16 environmental protection programs have established strict standards to
17 reduce pollution and protect public health and safety and the
18 environment.

19 (2) The legislature also finds that, as the number of environmental
20 and land use laws have grown in Washington, so have the number of
21 permits required of business and government. The increasing number of
22 individual permits and permit authorities has generated the potential
23 for conflict, overlap, and duplication among various state, local, and
24 federal permits. Lack of coordination in the processing of permit
25 applications may cause costly delays and frustration to the applicant.

26 (3) The legislature further finds that not all project applicants
27 require the same type of technical assistance. Applicants with small
28 projects may merely need information about local and state permits and
29 assistance in applying for those permits, while intermediate-sized
30 projects may require a facilitated permit process and large complex
31 projects may need extensive coordination among local, state, and
32 federal agencies.

33 (4) The legislature therefore finds that a range of assistance and
34 coordination options should be available to project applicants from a
35 state office independent of any local, state, or federal regulatory

1 agency. The legislature finds that citizens, businesses, and project
2 applicants should be provided with:

3 (a) A reliable and consolidated source of information concerning
4 federal, state, and local environmental and land use laws and
5 procedures that may apply to any given project;

6 (b) Facilitated interagency forums for discussion of significant
7 issues related to the multiple permitting processes if needed for some
8 project applicants; and

9 (c) Active coordination of all applicable regulatory and land use
10 permitting procedures if needed for some project applicants.

11 (5) The legislature declares that the purpose of this chapter is to
12 transfer the existing permit assistance center in the department of
13 ecology to a new office of permit assistance in the office of the
14 governor to:

15 (a) Assure that citizens, businesses, and project applicants will
16 continue to be provided with vital information regarding environmental
17 and land use laws and with assistance in complying with environmental
18 and land use laws to promote understanding of these laws and to protect
19 public health and safety and the environment;

20 (b) Ensure that facilitation of decisions by agencies on project
21 permit decisions upon project applicants' request promotes both process
22 efficiency and environmental protection;

23 (c) Allow for coordination of the permit process for large projects
24 upon project applicants' request and at project applicants' expense to
25 promote efficiency, ensure certainty, and avoid conflicts among
26 permitting agencies;

27 (d) Provide these services through an office independent of any
28 regulatory agency to ensure that any potential or perceived conflicts
29 of interest related to providing these services or making permit
30 decisions can be avoided.

31 (6) The legislature intends that establishing an office of permit
32 assistance in the office of the governor will provide these services
33 without abrogating the authority of any federal, state, or local agency
34 to make decisions on permits or use authorizations that it issues. The
35 legislature therefore declares that the office of permit assistance in
36 the office of the governor shall have authority to provide these
37 services but shall not have any authority to make decisions on permits
38 or use authorizations.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Coordination function" means management of the coordinated
4 permit process specified in section 6 of this act.

5 (2) "Director" means the director of the office of permit
6 assistance established in section 3 of this act.

7 (3) "Facilitation function" means management of the project
8 facilitation function specified in section 5 of this act.

9 (4) "Information function" means the provision of information and
10 assistance to citizens, businesses, and project applicants.
11 "Information function" includes, but is not limited to, the following:

12 (a) Publishing and periodically updating one or more handbooks
13 containing lists and explanations of permit laws, including, to the
14 extent possible, all relevant local, state, federal, and tribal laws.
15 In providing this information, the office shall seek the cooperation of
16 relevant local, state, and federal agencies and tribal governments;

17 (b) Establishing and providing notice of a point of contact for
18 distribution of the handbook and advice to the public as to its
19 interpretation in any given case;

20 (c) Working closely and cooperatively with the business license
21 center in providing efficient and nonduplicative service to the public;
22 and

23 (d) Collecting and disseminating information to public and private
24 entities on federal, state, local, and tribal government programs that
25 rely on private professional expertise to assist governmental agencies
26 in project permit review.

27 (5) "Office" means the office of permit assistance in the office of
28 the governor as established in section 3 of this act.

29 (6) "Permit" includes any license, certificate, registration,
30 permit, or other form of use authorization required by a permit agency
31 to engage in a particular activity.

32 (7) "Project" means an activity, the conduct of which requires
33 permits from one or more permit agencies.

34 (8) "Project applicant" means a citizen, business, or any entity
35 seeking a permit or permits from any local, state, or federal agency.

36 (9) "Use authorization" means a lease, material purchase, easement,
37 permit, or other document authorizing the use of either state-owned
38 aquatic lands or materials, or both.

1 NEW SECTION. **Sec. 3.** (1) The office of permit assistance is
2 created in the office of the governor. The office shall:

3 (a) Fulfill the information function as defined in section 2(4) of
4 this act;

5 (b) Fulfill the facilitation function as defined in section 2(3) of
6 this act and as specified in section 5 of this act;

7 (c) Fulfill the coordination function as defined in section 2(1) of
8 this act and as specified in section 6 of this act;

9 (d) Coordinate negotiation and facilitate completion of cost
10 reimbursement agreements as specified in section 7 of this act;

11 (e) Conduct customer surveys to determine the effectiveness of the
12 office;

13 (f) Provide the following biennial reports to the governor and the
14 appropriate committees of the legislature:

15 (i) A performance report, based on the customer surveys conducted
16 according to (e) of this subsection;

17 (ii) A report on any statutory or regulatory conflicts identified
18 through the office's information, facilitation, and coordination
19 functions relating to differing legal authorities and roles of the
20 agencies issuing permits or use authorizations and how these were
21 resolved. The report may include recommendations to the legislature
22 and to agencies; and

23 (iii) A report regarding use of outside independent consultants
24 according to section 7 of this act, including the nature and amount of
25 work performed by outside independent consultants and implementation of
26 the requirements of section 7 of this act relating to costs.

27 (2) The office shall prioritize the expenditure of general fund
28 moneys allotted to the office to provide a set of services to the
29 applicants of small projects.

30 (3) The office shall work with state natural resource agencies,
31 local government officials, and the department of community, trade, and
32 economic development to create a range of permit assistance options for
33 permit applicants. These options include, but shall not be limited to,
34 a centralized customer call center, a web site for permitting
35 information, facilitation services offered on a regional basis, and a
36 process for developing a coordinated permit process utilizing a cost
37 reimbursement system authorized under section 7 of this act.

38 (4) The office shall work to develop informal processes for dispute
39 resolution between agencies and permit applicants.

(5) To the maximum extent possible, the office shall review the activities of the transportation permit efficiency and accountability committee established by chapter 47.06C RCW and determine if any initiatives developed through that process would be beneficial if implemented for other types of projects.

NEW SECTION. **Sec. 4.** (1) The office shall operate based on the principle that citizens of the state of Washington have the right to expect the following information to be provided to them when asking for a permit, license, or permission to engage in a lawful activity:

(a) A date and time for a decision on permits;

(b) A defined amount of information required to award a permit by a permitting authority before any application for permits can be accepted; and

(c) An estimate of the maximum amount of costs in fees, studies, or public processes that will be incurred by the project applicant.

(2) This section does not create an independent cause of action or affect any existing cause of action.

NEW SECTION. **Sec. 5.** (1) Upon the request of a project proponent, the office shall appoint a project facilitator to assist the project applicant in determining which regulatory requirements, processes, and permits may be required for development and operation of the proposed project. The project facilitator shall provide the information to the project applicant and explain the options available to the project applicant in obtaining the required permits.

(2) If requested by the project applicant, the project facilitator shall facilitate a project scoping meeting. The meeting may involve the project applicant, state agencies that may require a permit or use authorization for the project, and the local governments in whose jurisdiction the project is proposed. Federal agencies and tribal governments that either issue or may require a permit, or that may require a use authorization for the project, shall each be invited to participate in the scoping meeting. All agencies participating in the scoping process are encouraged to remain in communication for purposes of coordination throughout the subsequent permit review processes until final permit decisions are made.

(3) The purpose of the scoping meeting is to share perspectives and identify the issues and information needs of concern to each

1 participant with regard to the proposed project, and jointly develop a
2 strategy for managing the permitting process. During this review, the
3 permit agencies shall identify:

4 (a) The permits that are required for the project;

5 (b) A review of the permit application forms and other application
6 requirements of the agencies that are participating in the scoping
7 meeting;

8 (c) The specific information needs and issues of concern and their
9 significance to each participant with regard to the permitting
10 processes involved;

11 (d) Any statutory or regulatory conflicts that might arise relating
12 to differing legal authorities and roles of the agencies issuing the
13 permit or use authorization of the project;

14 (e) Any state or local jurisdiction or private sector liability
15 that might result from permitting or issuing a use authorization for
16 the project;

17 (f) Any natural resources, including federal or state listed
18 species, that might be adversely affected by the permitting or
19 authorizing decision; and

20 (g) The permit decision timelines that will be used by each permit
21 agency, including the time periods required to determine if the permit
22 applications are complete, to review the application or applications,
23 and to process the component permits. In the development of this
24 timeline, full attention must be given to achieving the maximum
25 efficiencies possible through concurrent studies, consolidated
26 applications, hearings, and comment periods.

27 (4) The outcome of the project scoping review shall be documented
28 in written form, furnished to the project applicant, and be made
29 available to the public.

30 (5) The project scoping process shall be concluded within sixty
31 days of the project applicant's request to initiate this process.

32 (6) Upon completion of this review, the permitting and authorizing
33 agencies and governments shall proceed according to their respective
34 statutes.

35 (7) The process outlined in this section does not create an
36 independent cause of action or affect any existing cause of action.

37 NEW SECTION. **Sec. 6.** (1) Upon request, a project applicant also
38 may request that the office actively coordinate a project permitting

1 process by coordinating negotiations for a cost reimbursement agreement
2 and facilitating completion of such agreement. This process shall be
3 implemented through a cost reimbursement agreement developed under
4 section 7 of this act.

5 (2) According to the specific requirements contained in a cost
6 reimbursement agreement, the office may convene a project scoping
7 meeting as outlined in section 5 of this act, serve as the main point
8 of contact for the project applicant with regard to the coordinated
9 permit process for the project, and manage the procedural aspects of
10 that process consistent with existing laws. In carrying out these
11 responsibilities, the office shall work with the project applicant to
12 verify that the project applicant has all the information needed to
13 apply for all the component permits that are incorporated in the
14 coordinated permit process for the project. The office also shall
15 coordinate the review of those permits by the permit agencies, confirm
16 that timely permit decisions are made by the permit agencies, and
17 assist in resolving any conflict or inconsistency among the permit
18 requirements and conditions that are to be imposed by the permit
19 agencies. The office shall maintain contact with the applicant and
20 local, state, and federal permit agencies to ensure that the process is
21 progressing as scheduled.

22 (3) Upon completion of the cost reimbursement agreement, each
23 permit agency shall send at least one representative qualified to make
24 decisions concerning the applicability and timelines associated with
25 all permits administered by that jurisdiction to a scoping meeting as
26 outlined under section 5 of this act. At the request of the applicant,
27 the office shall notify any relevant federal agency or federally
28 recognized tribe of the date of the meeting and invite that agency's
29 participation in the process.

30 (4) If a permit agency or the applicant foresees, at any time, that
31 it will be unable to meet its obligations under the agreement, it shall
32 notify the office of the problem. The office shall notify the permit
33 agencies and the applicant and, upon agreement of all parties, adjust
34 the schedule, or, if necessary, schedule another work plan meeting.

35 NEW SECTION. **Sec. 7.** (1) The office shall develop a method of
36 determining, collecting, and distributing cost reimbursement for the
37 costs associated with carrying out the purposes of this chapter.

1 (2) The office may coordinate negotiation and facilitate completion
2 of a written agreement with the project applicant to recover from the
3 project applicant the reasonable costs incurred by the office and
4 permit agencies in carrying out the requirements of this chapter.

5 (3) The office may coordinate negotiation and facilitate completion
6 of a written agreement with the project applicant to recover from the
7 project applicant the reasonable costs incurred by outside independent
8 consultants selected by the office and permit agencies to perform
9 permit review and processing tasks consistent with the coordinated
10 permit process.

11 (4) The office and outside independent consultants may recover only
12 the costs of performing those permit services that are coordinated
13 through the coordinated permitting process established under this
14 chapter. The billing process shall provide for accurate time and cost
15 accounting and may include a billing cycle that provides for progress
16 payments.

17 (5) Prior to providing reimbursement to participating permit
18 agencies under this chapter, the office shall confirm that the
19 participating permit agencies have made all the permit decisions that
20 are necessary for the incorporation of the permits into the coordinated
21 permit process and act on the component permits within the time periods
22 agreed to by the participating permit agencies under the process
23 outlined in section 6 of this act.

24 (6) The office shall adopt a policy to administer cost
25 reimbursement agreements executed under this section. Cost
26 reimbursement agreements administered by the office under this section
27 must be based on competitive bids that are awarded for each agreement
28 from a prequalified consultant roster.

29 (7) Prior to entering negotiation with the applicant on cost
30 reimbursement, the office shall request work load analyses for the
31 permits from each permitting agency. These analyses shall be available
32 to the public. The office may only agree to reduce work load if there
33 is a good cause to do so and there is no significant impact on
34 environmental review.

35 (8) If independent consultants are hired under the cost
36 reimbursement agreement, they shall report directly to the permitting
37 agency. The department shall, in developing the agreement, ensure that
38 final decisions that involve policy matters are made by the agency and
39 not by the consultant.

1 (9) The office shall develop guidance to ensure that, in developing
2 cost reimbursement agreements, conflict of interest problems are
3 eliminated.

4 (10) For projects it coordinates, the office shall coordinate the
5 negotiation of all cost-reimbursement agreements executed under RCW
6 43.21A.690, 43.30.420, 43.70.630, 43.300.080, and 70.94.085. The
7 office and the permit agencies shall be signatories to the agreements.
8 The appropriate permit agency shall manage performance of its portion
9 of the agreement.

10 NEW SECTION. **Sec. 8.** (1) There is established the permit
11 assistance advisory council composed of eleven members.

12 (a) The governor shall appoint seven members. In making these
13 appointments, the governor shall include representation from business,
14 the environmental community, agriculture, port districts, counties,
15 cities, and the tribes. Appointments to the council shall reflect
16 geographical balance and the diversity of population within Washington
17 state. Members shall serve four-year terms. Of the initial members
18 appointed to the council, two shall serve for two years, two shall
19 serve for three years, and two shall serve for four years. Thereafter
20 members shall be appointed to four-year terms. Vacancies shall be
21 filled by appointment in the same manner as the original appointment
22 for the remainder of the unexpired term of the position being vacated.

23 (b) Two members shall be members of the senate selected by the
24 president of the senate with one member selected from each caucus in
25 the senate, and two members shall be members of the house of
26 representatives selected by the speaker of the house of representatives
27 with one member selected from each caucus in the house of
28 representatives. The legislative members shall be nonvoting members of
29 the council.

30 (2) Nonlegislative members shall be reimbursed for travel expenses
31 as provided in RCW 43.03.050 and 43.03.060. Legislative members shall
32 be reimbursed as provided in RCW 44.04.120.

33 (3) The council shall elect a chair and a vice-chair from the
34 voting members of the committee. The chair and vice-chair shall serve
35 a term of one year.

36 (4) The council shall:

37 (a) Assess the performance of the office;

(b) Review customer surveys conducted by the office to determine the effectiveness of the office; and

(c) Recommend changes to the services provided by the office to enhance technical assistance to project applicants.

(5) The council shall meet at least four times per year.

NEW SECTION. **Sec. 9.** (1) The powers, duties, and functions of the permit assistance center at the department of ecology are transferred to the office created in section 3 of this act.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of ecology in carrying out the powers, functions, and duties transferred shall be made available to the office. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office.

(b) Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on June 30, 2002, be transferred and credited to the office.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office. All existing contracts and obligations shall remain in full force and shall be performed by the office.

(4) The transfer of the powers, duties, functions, and personnel of the authority shall not affect the validity of any act performed before June 30, 2002.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected,

1 the state auditor, and the state treasurer. Each of these shall make
2 the appropriate transfer and adjustments in funds and appropriation
3 accounts and equipment records in accordance with the certification.

4 NEW SECTION. **Sec. 10.** Nothing in this chapter affects the
5 jurisdiction of the energy facility site evaluation council as provided
6 in chapter 80.50 RCW.

7 NEW SECTION. **Sec. 11.** (1) This chapter may not be construed to
8 limit or abridge the powers and duties granted to any permit agency
9 under the law that authorizes or requires the agency to issue a permit
10 or a use authorization for a project.

11 (2) Nothing in this chapter authorizes the office to make decisions
12 on permits or use authorizations.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.131
14 RCW to read as follows:

15 The office of permit assistance and its powers and duties terminate
16 June 30, 2008, as provided in section 13 of this act.

17 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.131
18 RCW to read as follows:

19 The following acts or parts of acts, as now existing or hereafter
20 amended, are each repealed, effective June 30, 2008:

- 21 (1) Section 1 of this act;
- 22 (2) Section 2 of this act;
- 23 (3) Section 3 of this act;
- 24 (4) Section 4 of this act;
- 25 (5) Section 5 of this act;
- 26 (6) Section 6 of this act;
- 27 (7) Section 7 of this act;
- 28 (8) Section 8 of this act;
- 29 (9) Section 9 of this act;
- 30 (10) Section 10 of this act; and
- 31 (11) Section 11 of this act.

32 NEW SECTION. **Sec. 14.** The joint legislative and audit review
33 committee shall work within its existing resources in conducting the
34 sunset review for the office of permit assistance.

1 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act
2 constitute a new chapter in Title 43 RCW.

3 NEW SECTION. **Sec. 16.** If specific funding for the purposes of
4 this act, referencing this act by bill or chapter number, is not
5 provided by June 30, 2002, in the omnibus appropriations act, this act
6 is null and void.

7 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately."

11 **E2SHB 2671** - S AMD
12 By Senator

13
14 On page 1, line 2 of the title, after "ecology;" strike the
15 remainder of the title and insert "adding new sections to chapter
16 43.131 RCW; adding a new chapter to Title 43 RCW; creating new
17 sections; and declaring an emergency."

--- END ---